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No. 83-1588

IN THE

Supreme Court of the United States

October Term, 1983

VIRGINIA CRAMER,

Petitioner,

v.

STATE BAR OF MICHIGAN, JOHN D. O'HAIR, WILLIAM LEO CAHALAN, RICHARD D. KUHN, H. ROLLIN ALLEN, and All Members of the State Bar of Michigan similarly situated,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF AND APPENDIX IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

THE INSTANT CAUSE FAILS TO PRESENT A SUBSTANTIAL FEDERAL QUESTION, AS THE DECISIONS BELOW ARE BASED UPON THE DOCTRINE OF JUDICIAL IMMUNITY FROM SUIT FOR ACTIONS TAKEN IN OFFICIAL JUDICIAL CAPACITY, IN ACCORDANCE WITH PREVIOUS DECISIONS OF THIS COURT.

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CITATIONS TO JUDGMENTS AND OPINIONS BELOW

The Orders, Opinions and Judgments in the cases below, those being of the Oakland County Circuit Court for the State of Michigan, the United States District Court for the Eastern District, Southern Division of Michigan, and the Sixth Circuit Court of Appeals, are set forth in the Appendix to this Brief.

STATUTORY AND CONSTITUTIONAL PROVISIONS CITED

MICH. CONST. art. VI, § 1:

> "The judicial power of the state is vested exclusively in one court of justice which shall be divided into one supreme court, one court of appeals, one trial court of general jurisdiction known as the circuit court, one probate court, and courts of limited jurisdiction that the legislature may establish by a two-thirds vote of the members elected to and serving in each house."

MICH. CONST. art. VI, § 13:

> "The circuit court shall have original jurisdiction in all matters not prohibited by law; appellate jurisdiction from all inferior courts and tribunals except as otherwise provided by law; power to issue, hear and determine prerogative and remedial writs; supervisory and general control over inferior courts and tribunals within their respective jurisdictions in accordance with rules of the supreme court; and jurisdiction of other cases and matters as provided by rules of the supreme court."

Mich. Comp. Laws Ann.
§ 600.916 (West 1981):

> "It is unlawful for any person to practice law, or to engage in the law business, or in any manner whatsoever to lead others to believe that he is authorized to practice law or to engage in the law business, or in any manner whatsoever to represent or designate himself as an attorney and counselor, attorney at law, or lawyer, unless the person so doing is regularly licensed and

authorized to practice law in this state. Any person who violates the provisions of this section is guilty of contempt of the supreme court and of the circuit court of the county in which the violation occurred, and upon conviction is punishable as provided by law. This section does not apply to a person who is duly licensed and authorized to practice law in another state while temporarily in this state and engaged in a particular matter."

Mich. Comp. Laws Ann.
§ 600.1711 (West 1981):

"(1) When any contempt is committed in the immediate view and presence of the court, the court may punish it summarily by fine, or imprisonment, or both.

(2) When any contempt is committed other than in the immediate view and presence of the court, the court may punish it by fine or imprisonment, or both, after proof of the facts charged has been made by affidavit or other method and opportunity has been given to defend."

42 U.S.C.S. § 1983
(Law Co-op. 1978 & Supp. 1983):

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or

other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

STATEMENT OF FACTS

Petitioner, VIRGINIA CRAMER, complains against Respondent, HONORABLE RICHARD D. KUHN, for actions taken by him while serving in his official capacity as Oakland County Circuit Judge.

All actions taken by Respondent HONORABLE RICHARD D. KUHN arise from two Oakland County Circuit Court for the State of Michigan cases: Those being *Horn* v. *Horn*, Case No. 75-121954-DO; and *Seaholm* v. *Seaholm*, Case No. 74-114277-DO. Both cases concerned *pro confesso* divorces in which the parties were proceeding *in pro per* using "divorce kits" supplied by the Petitioner, VIRGINIA CRAMER. Upon questioning, on the record, the parties acknowledged VIRGINIA CRAMER's assistance in their divorce proceedings which went above and beyond the mere supplying of forms.

The Circuit Court, *sua sponte*, issued an Order to Show Cause in *Seaholm*, Case No. 74-114277-DO, on April 4, 1975, ordering VIRGINIA CRAMER to appear to show cause why she should not be held in contempt of Court for the unauthorized practice of law, pursuant to Mich. Comp. Laws Ann. § 600.916 (West 1981) (A-1). This Order was duly served upon VIRGINIA CRAMER, on the same date, by means of personal service.

VIRGINIA CRAMER failed to appear on April 9, 1975, as ordered. Respondent, HONORABLE RICHARD D. KUHN, subsequently issued an Order for Bench Warrant (A-3)

on that date for VIRGINIA CRAMER's failure to appear. That Bench Warrant remained outstanding as VIRGINIA CRAMER failed to appear voluntarily and was not apprehended.

The Court, *sua sponte*, issued a second Order to Show Cause in *Horn*, Case No. 75-121954-DO, on May 8, 1975 (A-4), ordering Petitioner to appear and show cause why she should not be held in contempt for the unauthorized practice of law in that case. This Order was not personally served as VIRGINIA CRAMER would not accept service. On May 16, 1975, HONORABLE RICHARD D. KUHN issued an Order for Substituted Service (A-6). VIRGINIA CRAMER was served with the Order to Show Cause by means of substituted service on May 16, 1975.

Petitioner, VIRGINIA CRAMER, failed to appear on May 21, 1975, as ordered, and Respondent, HONORABLE RICHARD D. KUHN, issued an Order for Bench Warrant on July 24, 1975. Again, VIRGINIA CRAMER was not arrested and did not voluntarily appear before the Court (A-7).

On Friday, June 12, 1981, VIRGINIA CRAMER was taken into custody and transported to the Oakland County Jail pursuant to the outstanding Bench Warrant issued on April 9, 1975, in Case No. 74-114277-DO.

On Monday, June 16, 1981, VIRGINIA CRAMER was brought before the HONORABLE RICHARD D. KUHN, was examined by him and was released.

Petitioner, VIRGINIA CRAMER, complained in the United States District Court against Respondent, HONORABLE RICHARD D. KUHN, alleging that these acts violated her civil and constitutional rights and further alleging that the HONORABLE RICHARD D. KUHN had no jurisdiction to enter the Orders as set forth above. Petitioner prayed for Declaratory Judgment and damages.

In a Motion for Summary Judgment and Motion to Dismiss, Respondent, HONORABLE RICHARD D. KUHN, maintained that he had jurisdiction over Petitioner, VIRGINIA CRAMER, at all times relevant thereto and, further, that he was immune from suits alleging damages as all actions were taken while he was sitting in his official capacity as Oakland County Circuit Judge.

On June 30, 1982, the District Court issued an Opinion granting *inter alia*, the HONORABLE RICHARD D. KUHN's Motion to Dismiss Plaintiff's Complaint (A-8; A-20).

On July 30, 1982, Petitioner, VIRGINIA CRAMER, filed a "Motion for Rehearing and to Amend and Correct Memorandum Opinion of June 30, 1982, and to Vacate or Set Aside Dismissals".

On October 8, 1982, the District Court issued a Memorandum Opinion denying VIRGINIA CRAMER's prayer for Rehearing (A-21; A-23).

Petitioner filed an Appeal with the United States Court of Appeals for the Sixth Circuit, Case No. 82-1855. On November 21, 1983, said Court issued an Order affirming the District Court's judgment. The Order was issued as a Mandate on December 29, 1983 (A-25).

It is from these lower court decisions that Petitioner seeks relief in her Petition for Writ of Certiorari. As many issues contained within Petitioner's Petition are solely applicable to other of the Respondents, Respondent HONORABLE RICHARD D. KUHN addresses only that issue which directly addresses him and his actions.

SUMMARY OF ARGUMENT

The question presented with respect to Respondent HONORABLE RICHARD D. KUHN does not present a substantial federal question. The Court of Appeals'

decision below is not in conflict with other federal decisions but is, in fact, in accordance with other Circuit decisions as well as decisions of this Court. Supreme Court, Rule 17.1(a).

The issue concerns the absolute immunity accorded judicial officers throughout the history of American jurisprudence. The seminal American decision concerning the subject of judicial immunity is *Bradley* v. *Fisher*, 13 Wall. 335, 80 U.S. 335 (1872), wherein the Court held judges of courts of superior or general jurisdiction are not liable for civil actions for judicial actions. This doctrine has endured in the face of challenges founded upon 28 U.S.C.S. §§ 1343, 2201 and 42 U.S.C.S. § 1983. *Kennedy* v. *Fox*, 232 F.2d 288 (6th Cir. 1956).

Circuit Courts throughout the State of Michigan are expressly designated as trial courts of general jurisdiction by the Michigan Constitution, art. VI, § 1. In the instant case, Respondent, HONORABLE RICHARD D. KUHN, as a State of Michigan Circuit Court Judge, was acting solely in accordance with the general jurisdiction granted him by the Michigan Constitution.

The United States District and Sixth Circuit Appeals Courts below upheld this judicial immunity doctrine in their dismissals of the cause brought by Petitioner.

As the lower court decisions are not in conflict with other federal decisions regarding this issue and as a review of the facts and law in the instant cause would not contribute to the jurisprudence of federal decisions, Respondent, HONORABLE RICHARD D. KUHN, prays this Honorable Court deny review of the Petition for Writ of Certiorari now pending before it.

ARGUMENT

Petitioner herein prays, through her Petition for Writ of Certiorari, for review of the Judgments and Orders entered by the United States District Court for the Eastern District, Southern Division, and the Sixth Circuit Court of Appeals which dismissed the cause of action brought against Respondent, HONORABLE RICHARD D. KUHN, Oakland County Circuit Judge.

The question presented with respect to HONORABLE RICHARD D. KUHN does not present a substantial federal question for review. The District Court and Court of Appeals' decisions below are not in conflict with other federal decisions but are, in fact, in accordance with a plethora of federal decisions, including those of this Court. Supreme Court, Rule 17.1(a).

Petitioner, VIRGINIA CRAMER's claims with respect to the HONORABLE RICHARD D. KUHN, named as Respondent herein, were rightfully dismissed by the lower courts due to the absolute immunity accorded such officers throughout the history of American jurisprudence. The seminal American decision concerning the subject of judicial immunity is *Bradley* v. *Fisher*, 13 Wall. 335, 80 U.S. 335 (1872). There the Court held that judges of courts of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction and alleged to have been done maliciously or corruptly; see also *Kennedy* v. *Fox*, 232 F.2d 288, 290 (6th Cir. 1956).

Justice Field wrote the opinion of the Court in *Bradley* wherein he stated that:

> "A distinction must be here observed between excess of jurisdiction and the clear absence of all

> jurisdiction over the subject-matter. Where there is clearly no jurisdiction over the subject-matter any authority exercised is a usurped authority, and for the exercise of such authority, when the want of jurisdiction is known to the judge, no excuse is permissible . . . But if on the other hand a judge of a criminal court, invested with general criminal jurisdiction over offenses committed within a certain district, should hold a particular act to be a public offense, which is not by the law made an offense, and proceed to the arrest and trial of a party charged with such an act, or should sentence a party convicted to a greater punishment than that authorized by the law upon its proper construction, no personal liability to civil action for such acts would attach to the judge, although these acts would be in excess of his jurisdiction, or of the jurisdiction of the Court held by him, for these are particulars for his judicial consideration, whenever his general jurisdiction over the subject-matter is invoked." *Supra*, 13 Wall. 351, 352, 80 U.S. 351, 352 (1872).

In *Alzua* v. *Johnson*, 231 U.S. 106, 34 S. Ct. 27 (1913), the Supreme Court adhered to the doctrine of *Bradley* v. *Fisher*, *supra*, and held in an opinion prepared by Mr. Justice Holmes that the immunity of judges from all civil actions, for damages for their official acts, is so firmly established in American jurisprudence that it would be considered to have been carried into the Phillipine Islands when American Courts were established. The United States Court of Appeals for the Sixth Circuit has strongly adhered to this doctrine even in the face of attacks founded upon 28 U.S.C.S. §§ 1343, 2201 and 42 U.S.C.S. § 1983; see *Kennedy* v. *Fox*, 232 F.2d 288, 290, 291 (6th Cir. 1956); and *Pierson* v. *Ray*, 386 U.S. 547, 87 S. Ct. 1213 (1967). This principle was most recently

enunciated in the case of *Nixon* v. *Fitzgerald*, 457 U.S. 731, 102 S. Ct. 2690, 2700 (1982), wherein the Supreme Court reiterated the continued recognition of absolute immunity for all judicial acts.

The Circuit Courts throughout Michigan are expressly designated as the trial courts of general jurisdiction by the Michigan Constitution, art. VI, § 1. MICH. CONST. art. VI, § 13 gives the Circuit Courts original jurisdiction in all matters not prohibited by law. There is absolutely no question but that the Respondent HONORABLE RICHARD D. KUHN was acting solely in accordance with the general jurisdiction granted him as a Circuit Court Judge sitting in the State of Michigan.

The United States Supreme Court elucidated the principles controlling this inquiry:

> ". . . in determining whether a defendant judge is immune from suit [the necessary inquiry] is whether at the time he took the challenged action he had jurisdiction over the subject-matter before him . . . *The scope of the judge's jurisdiction must be construed broadly where the issue is the immunity of the judge.* A judge will *not* be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority, *rather he will be subjected to liability only when he has acted in the clear absence of all jurisdiction.*" (Emphasis Added) *Stump* v. *Sparkman*, 435 U.S. 349, 356, 98 S. Ct. 1099 (1978), citing *Bradley* v. *Fisher*, *supra*; see also *Crowe* v. *Lucas*, 595 F.2d 985, 989 (5th Cir. 1979); and *McAlester* v. *Brown*, 469 F.2d 1280, 1282 (5th Cir. 1972).

A judge is *absolutely* immune from liability for his judicial acts even if his exercise of authority is flawed by the commission of grave procedural errors, *Stump* v. *Sparkman, supra* at page 360; also see *Wood* v. *Strickland*, 420 U.S. 308, 95 S. Ct. 992 (1975); citing to *Tenney* v. *Brandhove*, 341 U.S. 367, 71 S. Ct. 783 (1951). Such immunity obtains in suits under the Civil Rights Act, 42 U.S.C.S. § 1983:

> "We do not believe that this settled principle of law was abolished by § 1983, which makes liable 'every person' who under color of law deprives another person of his civil rights. The legislative record gives no clear indication that Congress meant to abolish wholesale all common-law immunities. Accordingly, this Court held in *Tenney* v *Brandhove*, 341 US 367, 95 L Ed 1019, 71 S Ct 783 (1951), that the immunity of legislators for acts within the legislative role was not abolished. The immunity of judges for acts within the judicial role is equally well established, and we presume that Congress would have specifically so provided had it wished to abolish the doctrine." *Pierson* v. *Ray, supra*, at 554, 555.

The instant cause alleges that HONORABLE RICHARD D. KUHN acted without jurisdiction. As a matter of law, VIRGINIA CRAMER is incorrect in her assertion.

In both Michigan Circuit Court cases, upon recorded testimony, HONORABLE RICHARD D. KUHN was informed as to facts establishing that Petitioner herein was engaged in the unauthorized practice of law, not generally, but specifically as to parties appearing before him. The law of the State of Michigan prohibits such practice:

> "It is unlawful for any person to practice law, or engage in the law business, or in any manner

> whatsoever to lead others to believe that he is authorized to practice law or to engage in the law business, or in any manner whatsoever to represent or designate himself as an attorney and counselor, attorney at law, or lawyer, unless the person so doing is regularly licensed and authorized to practice law in this state. *Any person who violates the provisions of this section is guilty of contempt* of the supreme court and *of the circuit court of the county in which the violation occurred*, and upon conviction is punishable as provided by law. This section does not apply to a person who is duly licensed and authorized to practice law in another state while temporarily in this state and engaged in a particular matter." Mich. Comp. Laws Ann. § 600.916 (Emphasis Added)

Punishment for contempt of court is set forth in Mich. Comp. Laws Ann. § 600.1711:

> "(1) When any contempt is committed in the immediate view and presence of the court, the court may punish it summarily by fine, or imprisonment, or both.
>
> (2) When any contempt is committed other than in the immediate view and presence of the court, the court may punish it by fine or imprisonment, or both, after proof of the facts charged has been made by affidavit *or other method* and opportunity has been given to defend." (Emphasis Added)

As Petitioner herein was not present in the courtroom at the time the contempt was made known to the Court, Section (2) of the above-cited statute was employed by the Court.

Opportunity to defend was given to VIRGINIA CRAMER herein by means of Orders to Show Cause which were served. While Affidavits were not filed to establish the facts charged, the Court heard testimony as to the facts and had the Court file and record before it. Such was found to be sufficient to satisfy the statute and to establish jurisdiction in *In re Albert*, 383 Mich. 722, 179 N.W.2d 20 (1970), wherein it was stated at page 724:

> "Respondent's assertion that a contempt procedure must include a show-cause order based on an affidavit supporting the charged facts is not correct. A court's judicial notice of its own records is a wholly satisfactory 'other method' of establishing the failure or the fact of filing in a particular period — the gravamen of the charge here."

The subsequent Bench Warrants which were issued were for Petitioner's failure to appear as ordered by the Court, pursuant to the Orders to Show Cause.

It is clear that Respondent HONORABLE RICHARD D. KUHN had jurisdiction over VIRGINIA CRAMER, both when he issued the Show Cause Orders and when he issued the Orders for Bench Warrants.

VIRGINIA CRAMER refused to appear or have counsel appear on her behalf to address the Orders as set forth above. The more appropriate redress would have been through the normal appellate channels. The Supreme Court long ago noted that the doctrine of judicial immunity was designed to further the public interest in an independent judiciary, sometimes at the expense of legitimate individual grievances, *Bradley* v. *Fisher*, *supra*, at page 349.

Indeed, the Court in *Stump* recognized that the *Bradley* Court accepted those costs to aggrieved individuals

because the judicial system itself provided other means for protecting individual rights:

> "Against the consequences of Judges erroneous or irregular action, from whatever motives proceeding, the law has provided for private parties numerous remedies, and to those remedies they must, in such cases, resort." *Stump* v. *Sparkman, supra* at pp. 369, 370 citing to *Bradley* v. *Fisher, supra* at p. 354.

The *Stump* Court noted the existence of alternative forums and methods by which defendants should more properly vindicate their rights without clashing with the historical need for judicial immunity; see also *Jacobson* v. *Schaefer*, 441 F.2d 127 (7th Cir. 1971).

The policies underlying the vital necessity for according judicial officers immunity from the consequences of their judicial acts are too well established to be reiterated. As the Respondent, HONORABLE RICHARD D. KUHN, has jurisdiction over the Petitioner, VIRGINIA CRAMER, the absolute immunity accorded him could not be overcome. It was, therefore, incumbent upon the United States District Court below to dismiss VIRGINIA CRAMER's Complaint for money damages as against Respondent HONORABLE RICHARD D. KUHN.

It was in accordance with the above-stated legal principles that the Sixth Circuit Court of Appeals affirmed the District Court's dismissal.

As the decisions below in this cause are not in conflict with other federal decisions regarding this issue, as a review of the facts and law in this case would not significantly contribute to the jurisprudence of federal decisions, Respondent, HONORABLE RICHARD D. KUHN, urges this Honorable Court to deny review of the Petition for Writ of Certiorari now pending before it.

CONCLUSION

The Petition for Writ of Certiorari should be denied review as, lacking a substantial federal question, the decisions below being in accordance with other federal District, Circuit Court of Appeals and Supreme Court decisions.

Respectfully submitted,

OAKLAND COUNTY
CORPORATION COUNSEL

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Dated: April 27, 1984

APPENDIX

ORDER TO SHOW CAUSE

(State of Michigan — Circuit Court —
County of Oakland)

(Linda Carol Seaholm, Plaintiff, v Terry Lee Seaholm, Defendant — No. 74-114277)

At a session of said Court, held in the Courthouse, City of Pontiac, County of Oakland, State of Michigan, on this 4th day of April, A.D. 1975

Present: The Honorable Richard D. Kuhn,
Circuit Judge

Linda Carol Seaholm having appeared In Propria Persona in the above entitled cause, and it appearing from her testimony under oath that Virginia M. Cramer has been engaged in the unauthorized practice of law;

It Is Hereby Ordered that Virginia M. Cramer appear before this Court on Wednesday, April 9, 1975 at 2:30 in the afternoon, and show cause, if any she have, why she should not be punished for the contemptuous acts more fully described as follows:

> The selling of legal advice to Linda Carol Seaholm in regard to the institution and prosecution of divorce proceedings against Terry Lee Seaholm.
>
> Said advice was first sold between July 27 and August 5, 1974, and continued on various subsequent occasions up to February of 1975.

Said advice consisted of the explanation of how to fill out forms, also sold by Virginia M. Cramer. Said forms constitute the majority, if not all, of the pleadings filed in the above entitled cause.

Additionally, Virginia M. Cramer's fee included advice on how to appear before this Court, what to say, how to serve papers, and where to file them.

It Is Further Ordered that a true copy of the Order to Show Cause be personally served on Virginia M. Cramer on or before April 5, 1975.

/s/ Richard D. Kuhn,
Circuit Judge

(Certification Omitted)

ORDER FOR BENCH WARRANT

(State of Michigan — Circuit Court —
County of Oakland)

(Linda Carol Seaholm, Plaintiff, vs. Terry Lee Seaholm, Defendant — No. 74-114277; *In The Matter Of Virginia M. Cramer*)

At a session of said Court, held in the Courthouse, City of Pontiac, County of Oakland, State of Michigan, on this 9th day of April, A.D. 1975

Present: The Honorable Richard D. Kuhn,
Circuit Judge

The Court having ordered on the 4th day of April, A.D. 1975, that Virginia M. Cramer appear before this Court on Wednesday, April 9, 1975 at 2:30 in the afternoon and show cause, if any she have, why she should not be punished for Contempt of Court;

The case having been called in open Court, and the said Virginia M. Cramer having failed to appear as ordered;

The Court having noted that the Sheriff's Return of Service was duly filed stating that Virginia M. Cramer was served with the Order to Show Cause on the 4th day of April, A.D. 1975;

It Is Hereby Ordered that a Bench Warrant be issued by the Clerk of the Court commanding the arrest of the said Virginia M. Cramer and commanding that she be brought before this Court for disposition according to law.

/s/ Richard D. Kuhn,
Circuit Judge

(Certification Omitted)

A-4

ORDER TO SHOW CAUSE

(State of Michigan — Circuit Court —
County of Oakland)

(Debra Kaye Horn, Plaintiff, v Daniel Robert Horn, Defendant — No. 75-121954DO; *In The Matter Of Virginia Cramer*)

At a session of said Court, held in the Courthouse, City of Pontiac, County of Oakland, State of Michigan, on this 8th day of May, A.D. 1975

Present: The Honorable Richard D. Kuhn,
Circuit Judge

Debra Kaye Horn having appeared in Propria Persona in the above entitled cause, and it appearing from her testimony given under oath on April 30, 1975, that Virginia Cramer has been engaged in the unauthorized practice of law;

It Is Hereby Ordered that Virginia Cramer appear before this Court on Wednesday, May 21, 1975 at 2:00 o'clock in the afternoon, and show cause, if any she have, why she should not be punished for the contemptuous acts more fully described as follows:

> The selling of legal advice to Debra Kaye Horn in regard to the institution and prosecution of divorce proceedings in the Circuit Court for the County of Oakland, against Daniel Robert Horn.
>
> Said advice was sold over a period beginning on or about February 21, 1975 and continuing to on or about April 28, 1975.
>
> The fee for said advice was $55.00, which fee was paid on or about February 21, 1975.

Said advice consisted of the explanation of what proceedings to go through to obtain a judgment of divorce in the Circuit Court for the County of Oakland.

Additionally, for the fee charged, Virginia Cramer provided Debra Kaye Horn with a typed paper constituting the "litany" which Debra Kaye Horn should recite to put in proofs for her case.

For the fee charged, Virginia Cramer also prepared all pleadings in the above entitled cause.

It Is Further Ordered that a true copy of this Order to Show Cause be personally served on Virginia Cramer on or before May 17, 1975.

/s/ Richard D. Kuhn
Circuit Judge

(Certification Omitted)

ORDER FOR SUBSTITUTED SERVICE

(State of Michigan — Circuit Court —
County of Oakland)

(Debra Kaye Horn, Plaintiff, v Daniel Robert Horn, Defendant — No. 75-121954DO; *In The Matter Of Virginia Cramer*)

At a session of said Court, held in the Courthouse, City of Pontiac, County of Oakland, State of Michigan, on this 16th day of May, A.D. 1975

Present: The Honorable Richard D. Kuhn,
Circuit Judge

The Court being advised that diligent efforts to personally serve Virginia Cramer with the Order to Show Cause filed May 9, 1975, in this cause, have been in vain as appears from the Sheriff's return;

It Is Hereby Ordered that service of said Order to Show Cause on Virginia Cramer may be had by posting a true copy of it, together with a true copy of this Order, on the front door of her residence located at 27314 Clairview, Dearborn Heights, Michigan 48127; and in addition by mailing of same to said residence by registered mail, return receipt requested.

/s/ Richard D. Kuhn,
Circuit Judge

A copy of this order served as directed on 5/16/75 at 6:55PM attached to the front door. Sheriff's Complaint #75-8368; Served by Cpl. John F. Taylor, O.C.S.D.

(*Certification Omitted*)

ORDER FOR BENCH WARRANT

(State of Michigan — Circuit Court —
County of Oakland)

(Debra Kaye Horn, Plaintiff, vs Daniel Robert Horn, Defendant — No. 75-121954DO; *In The Matter Of Virginia Cramer*)

At a session of said Court, held in the Courthouse, in the City of Pontiac, County of Oakland, State of Michigan, on this 24th day of July, A.D. 1975

Present: The Honorable Richard D. Kuhn,
Circuit Judge

The Court having ordered on the 8th day of May, A.D. 1975, that Virginia Cramer appear before this Court on Wednesday, May 21, 1975 at 2:00 o'clock in the afternoon and show cause, if any she have, why she should not be punished for Contempt of Court;

The Court having Ordered Substitute Service of the Order to Show Cause, due to the inability to obtain personal service, as is more fully shown by the file in this cause;

The file reflecting further that the Order for Substituted Service was complied with;

The case having been called in open Court on the day and date set for hearing, and the said Virginia Cramer having failed to appear;

It Is Hereby Ordered that a Bench Warrant be issued by the Clerk of the Court commanding the arrest of the said Virginia Cramer and commanding that she be brought before this Court for disposition according to law.

/s/ Richard D. Kuhn,
Circuit Judge

(*Certification Omitted*)

MEMORANDUM OPINION

(United States District Court —
Eastern District of Michigan —
Southern Division)

(Virginia Cramer, Plaintiff, v. State Bar Of Michigan, Et Al., Defendants — Civil Action No. 81-73926)

This matter is before the Court on seven motions filed by the various parties to this action. These motions are:

1) Plaintiff's motion to amend petition of removal;

2) Plaintiff's motion for entry of order to show cause with temporary enjoining order and why preliminary or permanent injunctive order should not issue;

3) Plaintiff's motion for judgment by default (against defendant H. Rollin Allen and all other members of the Michigan State Bar similarly situated);

4) Defendant State Bar of Michigan's motion for entry of order remanding case to state court;

5) Defendants Judge O'Hair and Judge Cahalan's motion to dismiss;

6) Defendant Judge Kuhn's motion to dismiss or for summary judgment; and

7) Defendants State Bar of Michigan and H. Rollin Allen's motion to dismiss or for summary judgment.

A. FACTUAL BACKGROUND

The dispute in this action arose out of the attempts of the State Bar of Michigan to enforce an injunction it obtained in 1973 which prohibited Virginia Cramer from engaging in certain acts found to be the unauthorized practice of law. In order to understand the posture of the matter now before the Court, it is necessary to sort through the flurry of pleadings submitted and set forth the chronology of events preceeding the filing of this action.

On September 27, 1972, the State Bar of Michigan filed a complaint in the Wayne County Circuit Court against Harold Graham, Michael Gordon, and Virginia Cramer, individually and d/b/a Gordon-Graham & Cramer Associates, alleging that defendants were engaged in the unauthorized practice of law in violation of MCLA § 600.916, MSA § 27A.916. *State Bar of Michigan* v. *Cramer, et al.*, Civil Action No. 72-218571-CZ. On January 5, 1973, a judgment for plaintiff and an order granting injunctive relief against defendants was entered. Virginia Cramer subsequently was found in contempt of that order a number of times, and she appealed the matter, ultimately, to the Michigan Supreme Court. The Supreme Court, in an opinion reported at 399 Mich. 116 (1976), affirmed the finding of civil contempt of April 23, 1973 and the January 5, 1973 injunctive order of Judge O'Hair of Wayne County Circuit Court.

On the motion of the State Bar of Michigan, orders to show cause why Cramer should not be held in contempt of the January 5, 1973 order were issued on February 17, 1981 by Judge O'Hair and March 13, 1981 by Judge Cahalan. Cramer failed to appear on April 24, 1981, which was the date noticed. Judge O'Hair issued a bench warrant for her arrest on April 29, 1981.

On May 5, 1981 Cramer filed a motion for a writ of mandamus with the Michigan Supreme Court, on grounds unknown to this Court. She filed a motion for a stay with the Supreme Court on May 14 and some sort of supplemental motion on May 28. On June 12, 1981, she filed a motion to quash the arrest warrant with the Supreme Court and asked for certain other relief, also unknown to the Court. Cramer has not supplied the Court with copies of these various motions, only with copies of the orders of the Supreme Court disposing of them in favor of the State Bar.

Cramer was arrested on June 12, 1981 and appeared before Judge O'Hair, who released her upon her filing a $1,000 cash bond. Judge O'Hair set a hearing on the show cause for June 17, 1981. However, since there were two outstanding warrants for her arrest issued by Judge Kuhn in Oakland County, Cramer was not released, but was transported to the Oakland County Jail, where she was kept in custody over the weekend until she could appear before Judge Kuhn on June 15, 1981.

On April 4, 1975, Judge Kuhn, an Oakland County Circuit Judge, had issued *sua sponte* an order to show cause why Cramer should not be held in contempt for the unauthorized practice of law in the case of *Seaholm* v. *Seaholm*, Civ. No. 74-114277-DO. Cramer was personally served with the order. When she failed to appear on the noticed date, Judge Kuhn issued a bench warrant on April 9, 1975. Judge Kuhn issued a second order to show cause in *Horn* v. *Horn*, Civ. No. 75-121954-DO on May 8, 1975. Cramer would not accept personal service, so the judge ordered substituted service. Cramer again failed to appear on the noticed date, so Judge Kuhn issued another bench warrant on July 24, 1975. These two cases were divorce cases before Judge Kuhn where it came to his attention that Cramer had rendered some type of assistance to the parties. Cramer appeared before Judge

Kuhn on the outstanding bench warrants on June 15, 1981. Judge Kuhn released her after examining her.

On June 17, 1981, Cramer appeared before Judge O'Hair for the hearing on the order to show cause. She questioned the jurisdiction of the court to issue the order claiming that *State Bar of Michigan* v. *Cramer* was last heard in the Michigan Supreme Court, and since the case had not been remanded, the State Bar would be required to initiate new proceedings to pursue the matter. Judge O'Hair ordered the State Bar to file an amended motion which set forth specific allegations of misconduct that it intended to prove, and adjourned the contempt hearing to August 11, 1981.

On June 26, 1981, the Michigan Supreme Court denied Cramer's complaint for mandamus and other relief. On July 13, 1981, she filed a motion to quash service of the March 13, 1981 order to show cause in Wayne County Circuit Court, claiming that the court had no jurisdiction to issue the order to show cause or the bench warrant. On July 21, 1981 Judge O'Hair sent Cramer a letter denying her motion. On July 28, 1981, the Michigan Supreme Court denied Cramer's motion for superintending control.

On August 11, 1981 Judge O'Hair found Cramer in contempt of court for violating his January 5, 1973 order, after conducting a hearing on the matter in which Cramer participated. He ordered her to pay back the money she had received from her "client" and ordered that if she violated the January 1973 order again after August 11, 1981, she would be required to spend 30 days in Wayne County Jail as a deterrent to further violations of the court's order. Cramer would not approve the proposed judgment submitted by the State Bar, so its counsel noticed a hearing on a motion for entry of

judgment for October 30, 1981. Cramer filed this federal action on October 21, 1981. None of the parties has indicated whether an order was ever entered by Judge O'Hair finding Cramer in contempt, although it is clear that he did so on the record at the hearing on the show cause on August 11.

B. PETITION FOR REMOVAL AND FEDERAL COMPLAINT

On October 21, 1981, plaintiff filed a "petition for removal" of *State Bar of Michigan* v. *Cramer, supra*. There are a number of reasons why plaintiff's attempted removal of the state action filed against her in 1972 cannot be sustained. First of all, plaintiff has not complied with the statutory requirements of 28 USC § 1446 to establish a basis for federal removal jurisdiction. Section 1446(b) requires that the state action must be removed within 30 days of the receipt of the pleading or order rendering the action removable. Plaintiff's complaint and petition for removal appear to challenge the constitutionality of the issuance of the orders to show cause why she should not be held in contempt and the bench warrants by Judges O'Hair and Kuhn. Judge O'Hair issued the bench warrant at issue on April 29, 1981. Cramer was arrested and appeared before Judge O'Hair on June 12, 1981. Judge Kuhn issued the show causes and bench warrants at issue in 1975. If for no other reason, plaintiff's attempt to remove *State Bar of Michigan* v. *Cramer* fails because of untimeliness.

However, a more basic defect exists to defeat plaintiff's attempt to remove the state action. The 1973 judgment of the Wayne County Circuit Court against her was made final by the order of remittitur entered by the Michigan Supreme Court on January 20, 1977. It is, therefore, res judicata, and this Court has no authority to review that

judgment. *Mestice* v. *McShea*, 201 F.2d 363, 364 (3d Cir. 1953). For these reasons, plaintiff's motion to amend her petition for removal will be denied.

Remand to Wayne County would be pointless, as final judgment has been entered in the 1972 action, so dismissal would be a more appropriate remedy for the improvident removal of this action. However, in addition to her petition to remove the 1972 state action, plaintiff has filed a separate complaint, captioned *Virginia Cramer* v. *The State Bar of Michigan, et al.*, in which she has made adequate assertions of federal question jurisdiction. Named as defendants in her complaint are the State Bar of Michigan, Wayne County Judges John D. O'Hair and William Cahalan, Oakland County Circuit Judge Richard D. Kuhn, H. Rollin Allen, counsel for the State Bar of Michigan, and "All Other Members of the State Bar of Michigan similarly situated." She alleges in her complaint that she was arrested and imprisoned falsely in violation of the 1st, 4th, 5th, 6th and 14th amendments and 42 USC §§ 1983, 1985 and 1986. She seeks injunctive relief and monetary damages and has demanded a jury trial.

More specifically, plaintiff claims that the Wayne County and Oakland County Courts lacked jurisdiction to order her to show cause why she should not be held in contempt and to issue bench warrants enforcing such orders. She claims they lacked jurisdiction because the Michigan Supreme Court had not remanded *State Bar of Michigan* v. *Cramer* for any further proceedings after rendering its decision in 1976. She further asserts that the orders and bench warrants were issued without probable cause. She claims that she suffered mental humiliation and anguish because of the alleged false imprisonment and rude treatment while in custody.

C. *MOTIONS TO DISMISS OR FOR SUMMARY JUDGMENT*

Since plaintiff must show a "strong or substantial likelihood or probability of success on the merits" to obtain the preliminary injunctive relief she seeks, the Court first will turn to the various defendants' motions to dismiss to determine whether they have merit. *Mason County Medical Ass'n* v. *Knebel*, 563 F.2d 256, 261 (6th Cir. 1977); *Friendship* v. *Michigan Brick*, No. 80-1018 (6th Cir. slip op. May 26, 1982). Prior to a discussion of defendant's motions, however, the Court notes that H. Rollin Allen filed a motion to dismiss jointly with the State Bar of Michigan on November 17, 1981, four days after the clerk's entry of default and only 26 days after being served with plaintiff's complaint. The Court deems this a timely responsive pleading and therefore will deny plaintiff's motion for a default judgment against Allen and will set aside the clerk's entry of default. Fed. R. Civ. P. 55(c).

1. *Judges O'Hair and Cahalan's Motion to Dismiss*

Wayne County Circuit Court Judges O'Hair and Cahalan have filed a joint motion to dismiss plaintiff's claims against them as failing to state a claim upon which relief can be granted. The judges claim that they are protected from liability to plaintiff in this action by the doctrine of judicial immunity. The Court agrees and will dismiss plaintiff's claims against these two defendants.

The doctrine of judicial immunity was thoroughly discussed in the case of *Stump* v. *Sparkman*, 435 U.S. 349 (1978), in which the Supreme Court held that a judge is immune from liability for damages only when he has acted in the "clear absence of all jurisdiction." *Id.* at 357. More specifically, the court held that:

> [T]he necessary inquiry in determining whether a defendant judge is immune from suit is determining whether at the time he took the challenged action he had jurisdiction over the subject matter before him . . . . [T]he scope of the judge's jurisdiction must be construed broadly when the issue is the immunity of the judge. A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted "in the clear absence of all jurisdiction."

Id. at 356-57 citing *Bradley* v. *Fisher*, 13 Wall. 335, 351 (1872). A second consideration in determining judicial immunity is whether the judge was performing a "judicial act." The court in *Stump* v. *Sparkman* noted:

> The relevant cases demonstrate that the factors determining whether an act by a judge is a "judicial" one relate to the nature of the act itself, i.e., whether it is a function normally performed by a judge, and to the expectations of the parties, i.e., whether they dealt with the judge in his official capacity.

Id. at 362.

Like the judge in *Stump* v. *Sparkman*, Judges O'Hair and Cahalan are judges of a court of general jurisdiction of the State of Michigan. Michigan Constitution, art. 6, § 13, MCLA § 600.601. Circuit Courts in Michigan have the power to find in contempt of court parties to actions who disobey court orders, MCLA § 600.1701(5) and persons who engage in the unauthorized practice of law, MCLA § 600.916. Furthermore, courts may assert the contempt power to enforce civil remedies obtained by parties, MCLA § 600.1701(11). The State Bar of Michigan

had obtained an injunction in the previous state actions against plaintiff from Judge O'Hair in 1973, ordering plaintiff to cease the unauthorized practice of law, which was upheld by the Michigan Supreme Court. In an attempt to enforce this order, the State Bar applied to Judge O'Hair for a show cause why plaintiff should not be held in contempt of his 1973 order. This procedure was in accordance with MCLA § 600.1711 and MGCR 760, which provides as follows:

> For contempts not committed in the immediate view and presence of the court, upon a proper showing on ex parte motion supported by affidavits, the court shall either order the accused party to show cause at some reasonable time, to be therein specified, why he should not be punished for the alleged misconduct, or shall issue a bench warrant for the arrest of such party.

Issuing an order to show cause why a person should not be held in contempt and a bench warrant certainly are functions normally performed by a judge. Plaintiff clearly knew she was dealing with the defendant judges in their official capacity. The Court therefore finds that in performing the acts plaintiff complains of, Judges O'Hair and Cahalan were acting with jurisdiction and were engaged in judicial acts. Therefore, they are absolutely immune from liability arising out of plaintiff's claims and her claims against them will be dismissed.

2. Judge Kuhn's Motion to Dismiss

Like Judges O'Hair and Cahalan, Judge Kuhn is absolutely immune from liability arising out of plaintiff's claims in this case. MCLA § 600.916 provides that any person who engages in the unauthorized practice of law

is guilty of contempt of the circuit court of the county in which the violation has occurred. Because of the testimony adduced from parties appearing before him in divorce cases in his court, Judge Kuhn suspected that Cramer had violated this statute out of his presence and rightfully, and with jurisdiction under MCLA § 600.1711 and MGCR 760, issued the show causes and the subsequent bench warrants at issue. Plaintiff's claims against Judge Kuhn are without merit and will be dismissed.

3. *State Bar of Michigan and H. Rollin Allen's Motion to Dismiss or for Summary Judgment*

Both the State Bar and Allen, its attorney, claim immunity from this civil rights and false arrest action by virtue of the doctrine of sovereign immunity provided by the 11th Amendment. Indeed, the Supreme Court has held that suits for damages under 42 USC § 1983 against a state agency are prohibited by the 11th amendment. *Alabama* v. *Pugh*, 438 U.S. 781 (1978), *Quern* v. *Jordan*, 440 U.S. 332 (1979). Furthermore, there is authority supporting the State Bar's contentions that a state bar association as an integral part of a state's judicial process or as an agency of the state, cannot be sued under § 1983. *See, e.g., Coopersmith* v. *Supreme Court, State of Colorado*, 465 F.2d 993, 994 (10th Cir. 1972); *Clark* v. *State of Washington*, 366 F.2d 678, 681 (9th Cir. 1966); *Louis* v. *Supreme Court of Nevada*, 490 F.Supp. 1174, 1180 (D. Nev. 1980); *Silverton* v. *Department of Treasury*, 449 F. Supp. 1004, 1006 (C.D.Cal. 1978). However, the Court finds it unnecessary to reach the issue of whether plaintiff may maintain a § 1983 suit against the State Bar of Michigan. Assuming that defendants are amenable to suit under § 1983, an examination of plaintiff's complaint reveals that plaintiff has failed to state a claim against either the State Bar or Allen upon which relief can be granted.

Allen and the State Bar of Michigan are named in six paragraphs of plaintiff's complaint. In paragraphs 2.3 and 2.4, plaintiff asserts that "by the illegal conduct and instigation" of Allen, Judges O'Hair and Cahalan entered the illegal show cause orders which resulted in her arrest. In paragraph 2.8 she claims that such acts were groundless and malicious. In paragraphs 2.10, 2.11, and 2.13, plaintiff claims that unidentified acts of the State Bar of Michigan and its members were illegal, being in the absence of jurisdiction and willful, wanton and malicious.

Plaintiff's attack on the legality of the show cause orders and bench warrant issued by Judges O'Hair and Cahalan is based solely on her contention that the judges acted without jurisdiction. She makes no other claims of deprivation of due process or of other constitutional rights, e.g., inadequate notice or lack of a fair hearing. As has already been discussed at length, the judges and the State Bar and its counsel Allen acted to enforce an order of the court and a judgment in defendant's favor as permitted by Michigan law. Plaintiff has not shown that the show cause orders and bench warrant sought by the State Bar and Allen and issued by Judges Cahalan and O'Hair were issued erroneously. Plaintiff was arrested pursuant to a bench warrant that she has not shown was invalid. Therefore her claims of false arrest and false imprisonment must fail.

Reading her complaint in its most favorable light, plaintiff's claim against Allen is that he maliciously submitted groundless applications for show cause orders to Judges O'Hair and Cahalan which resulted in her arrest. However, plaintiff has indicated that she does not seek to pursue a claim of malicious prosecution or abuse of process in this case. (Plaintiff's response to State Bar's opposition to motion for default judgment at 17). The

wrongful acts plaintiff ascribes to Allen do not rise to the deprivation of constitutional rights alleged in her complaint. The Court finds that the facts alleged in plaintiff's complaint fail to state a claim against defendant Allen.

The Court likewise finds that plaintiff's complaint fails to state a claim against the State Bar of Michigan. Plaintiff merely accuses the State Bar of engaging in illegal acts and wanton and malicious wrongdoing without identifying any specific misconduct. Such conclusory allegations cannot survive a motion to dismiss.

4. Conclusion

In conclusion, plaintiff's motion to amend her petition for removal will be denied, as will her motion for a preliminary injunction and her motion for a default judgment. The State Bar's motion for remand will be denied because the entire federal action will be dismissed for failing to state a claim. Removal to Wayne County would be pointless, since final judgment in *State Bar of Michigan* v. *Cramer* was entered long ago. Defendants State Bar of Michigan, H. Rollin Allen, Judge O'Hair, Judge Cahalan, and Judge Kuhn's motions to dismiss will be granted. An appropriate order shall be submitted.

/s/ Ralph M. Freeman
United States District Judge

Dated: June 30, '82

(Certification Omitted)

ORDER OF DISMISSAL AS TO DEFENDANT, RICHARD D. KUHN, JUDGE OF THE SIXTH JUDICIAL CIRCUIT

(United States District Court —
Eastern District of Michigan —
Southern Division)

(Virginia Cramer, Plaintiff, v State Bar Of Michigan, et al, Defendants — Civil Action No. 81-73926)

Being fully advised in the premises and consistent with the June 30, 1982, Opinion of this Court;

It Is Hereby Ordered that Defendant, Richard D. Kuhn's, Judge of the Sixth Judicial Circuit, Motion to Dismiss is granted and Plaintiff's cause of action, therefore, Dismissed as to said Defendant.

/s/ Honorable Ralph M. Freeman
United States District Judge

Dated: 20 Jul 1982

(Certification Omitted)

MEMORANDUM OPINION

(United States District Court —
Eastern District of Michigan —
Southern Division)

(Virginia Cramer, Plaintiff, v. State Bar Of Michigan, Defendant — Civil Action No. 81-73926)

This matter is before the Court on plaintiff's motion for rehearing and to amend and correct the memorandum opinion of June 30, 1982 and to vacate and set aside dismissals. Rule 17(k) of the Local Rules of the United States District Court for the Eastern District of Michigan provides:

1. *Time*
   Any motion to alter or amend a judgment and any motion for rehearing or reconsideration shall be served not less than 10 days after entry of such judgment or order.

2. *No response and no hearing allowed*
   No response to the motion and no oral argument thereon shall be allowed unless the Court, after filing of the motion, otherwise directs.

3. *Grounds*
   Generally, and without restricting the discretion of the Court, motions for rehearing or reconsideration which merely present the same issues ruled upon by the court, either expressly or by reasonable implication, will not be granted. The movant must not only demonstrate a palpable defect by which the Court and the parties have been misled but

> also show that a different disposition of the case must result from a correction thereof.

After reviewing the motion and "supplemental matters to plaintiff's motion for rehearing, amendment of opinion and vacation of dismissals" filed by the plaintiff, the Court concludes that plaintiff's motion merely presents the same issues already ruled upon by the Court. The Court further concludes that plaintiff has failed to show a palpable defect by which the Court and the parties have been misled and that a different disposition of the case must result from a correction thereof.

Therefore, plaintiff's motion will be denied. An appropriate order shall be submitted.

/s/ Ralph M. Freeman
United States District Judge

Dated: Oct. 8, 1982

ORDER DENYING
PLAINTIFF'S MOTION FOR REHEARING

(United States District Court —
Eastern District of Michigan —
Southern Division)

(Virginia Cramer, Petitioner-Plaintiff, v The State Bar Of Michigan, et al, Defendants-Respondents — Civil Action No. 81-73926)

Being fully advised in the premises and consistent with the Memorandum Opinion rendered by this Court on October 8, 1982;

It Is Hereby Ordered that Plaintiff, Virginia Cramer's, Motion for Rehearing and to Amend and Correct the Opinion of June 30, 1982, and to Vacate and Set Aside Dismissals, is denied as to Defendant, Richard D. Kuhn, Judge of the Sixth Judicial Circuit Court of Michigan.

/s/ Honorable Ralph M. Freeman
U.S. District Court Judge

Dated: 21 Oct 1982

(Certification Omitted)

ORDER

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION
Sixth Circuit Rule 24 limits citation to specific situations. Please see Rule 24 before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court.
This notice is to be ***prominently*** *displayed if this decision is reproduced.*

(United States Court of Appeals
for the Sixth Circuit)

(Filed November 21, 1983)

(Virginia Cramer, Plaintiff-Appellant, v. State Bar Of Michigan; John D. O'Hair; William Leo Cahalan; Richard D. Kuhn; H. Rollin Allen, All Members Of The State Bar Of Michigan, Defendants-Appellees — No. 82-1855)

Before: Keith and Contie, Circuit Judges;
and Potter*, District Judge

This appeal has been referred to a panel of the Court pursuant to Rule 9(a), Rules of the Sixth Circuit. After examination of the record and briefs, this panel agrees unanimously that oral argument is not needed. Rule 34(a), Federal Rules of Appellate Procedure.

Plaintiff appeals the district court judgments entered July 6, 12 and 20, 1982, which dismissed plaintiff's action against all the named defendants. In the proceedings below, the district court found plaintiff's allegations of a civil rights violation to be without merit and also denied the injunctive relief sought by plaintiff. Having carefully examined the record and briefs, this Court concludes the district court did not err in its disposition of this case.

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* The Honorable John W. Potter, District Judge, Northern District of Ohio, sitting by designation.

For the reasons stated in the district court memorandum opinion filed July 1, 1982, as amended October 12, 1982, it is Ordered that the judgments of the district court be, and they hereby are, affirmed pursuant to Rule 9(d)(2), Rules of the Sixth Circuit.

Entered By Order Of The Court

John P. Hehman,
Clerk

Issued As Mandate: December 29, 1984 [*sic*, 1983]
Costs: None

(*Certification Omitted*)